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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOSE MALDONADO GUERRA JR., Defendant.	Criminal Case No. 08CR1027-L PLEA AGREEMENT

IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its counsel, KAREN P. HEWITT, United States Attorney, and ANDREW G. SCHOPLER, Assistant United States Attorney, and defendant, JOSE MALDONADO GUERRA JR. ("Defendant"), with the advice and consent of BENJAMIN P. LECHMAN, counsel for Defendant, as follows:

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I

THE PLEA

Defendant agrees to plead guilty to Counts 2 and 4 of the indictment in Criminal Case No. 08CR1027-L, charging Defendant with:

Count 2

> On or about February 5, 2008, within the Southern District of California, defendant JOSE MALDONADO GUERRA JR. did knowingly and intentionally possess, with intent to distribute, approximately 14.54 kilograms (approximately 31.99 pounds) of marijuana, a Schedule I Controlled Substance; in violation of Title 21, United States Code, Section 841(a)(1).

Count 4

> On or about March 10, 2008, within the Southern District of California, defendant JOSE MALDONADO GUERRA JR. did knowingly and intentionally possess, with intent to distribute, approximately 18.35 kilograms (approximately 40.37 pounds) of marijuana, a Schedule I Controlled Substance; in violation of Title 21, United States Code, Section 841(a)(1).

The Government agrees to move to dismiss without prejudice any remaining charges or allegations when Defendant is sentenced. **In addition, the Government agrees not to seek any enhanced penalties under either 18 U.S.C. § 3147 (for Defendant's commission of a felony while on pretrial release) or 21 U.S.C. § 851 (for Defendant's commission of the offense after a prior conviction for a felony drug offense).**

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offenses to which Defendant is pleading guilty have the following elements:

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Counts 2 & 4: Possession with Intent to Distribute

1. Defendant knowingly possessed marijuana in a measurable and detectable amount.

2. Defendant possessed it with the intent to deliver it to another person.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

Defendant's Identity

1. Defendant's true name is JOSE MALDONADO GUERRA JR. Defendant was born in Gridley, California, on April 3, 1972.

14.54 Kilograms of Marijuana (February 5, 2008)

2. On **February 5, 2008**, Defendant entered the United States from Mexico at the Otay Mesa, California, Port of Entry, as the driver and sole occupant of a white 1998 Ford Explorer, bearing California license plate number 6BGC886 ("Vehicle #1").

3. Vehicle #1 had approximately 14.54 kilograms of marijuana concealed in its spare tire.

4. Defendant knew that Vehicle #1 contained marijuana or some other prohibited drug, and Defendant intended to deliver it to another person.

18.35 Kilograms of Marijuana (March 10, 2008)

5. On **March 10, 2008**, Defendant entered the United States from Mexico at the Otay Mesa, California, Port of Entry, as the driver and sole occupant of a 2008 Chevrolet Uplander, bearing California license plate number 6AUU427 ("Vehicle #2").

6. Vehicle #2 had approximately 18.35 kilograms of marijuana concealed in its spare tire.

7. Defendant knew that Vehicle #2 contained marijuana or some other prohibited drug, and Defendant intended to deliver it to another person.

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III

PENALTIES

Defendant understands that the crimes to which Defendant is pleading guilty carry the following penalties:

A. a maximum 5 years in prison, per count;

B. a maximum $250,000 fine, per count;

C. a mandatory special assessment of $100, per count; and

D. a term of supervised release of not more than 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring Defendant to serve in prison all or part of the term of supervised release.

Defendant further understands that by pleading guilty Defendant may be deported or removed and may become ineligible for federal benefits.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

A. continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;

B. a speedy and public trial by jury;

C. the assistance of counsel at all stages of trial;

D. confront and cross-examine adverse witnesses;

E. present evidence and to have witnesses testify on behalf of Defendant; and

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F. not testify or have any adverse inferences drawn from the failure to testify.

Defendant also understands that this guilty plea waives any defenses he may have to the charge(s), including any defense based upon a statute of limitations.

V

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

The Government represents that any information establishing the factual innocence of Defendant known to the undersigned prosecutor in this case has been turned over to Defendant. The Government will continue to provide such information establishing the factual innocence of Defendant.

Defendant understands that if this case proceeded to trial, the Government would be required to provide impeachment information relating to any informants or other witnesses. In addition, if Defendant raised an affirmative defense, the Government would be required to provide information in its possession that supports such a defense. Defendant acknowledges, however, that by pleading guilty Defendant will not be provided this information, if any, and Defendant also waives the right to this information. Finally, Defendant agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

VI

DEFENDANT'S REPRESENTATION THAT GUILTY PLEA IS KNOWING AND VOLUNTARY

Defendant represents that:

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A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel, and has a clear understanding of the charges and the consequences of this plea;

B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this plea agreement or otherwise disclosed to the court;

C. No one has threatened Defendant or Defendant's family to induce this guilty plea; and

D. Defendant is pleading guilty because in truth and in fact Defendant is guilty and for no other reason.

VII

AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF CALIFORNIA

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by Defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed

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the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory, and the court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. Defendant understands further that the sentence cannot be determined until a presentence report has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be construed as limiting the Government's duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence Defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is **not binding on the Court**. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what Defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, Defendant nevertheless has no right to withdraw the plea.

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X

PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the parties understand that the Guidelines are only advisory and just one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures (if applicable) under the Guidelines:

1.	Base Offense Level [§ 2D1.1(a)(3),(c)]	18
2.	Minor Role [§ 3B1.2(b)]	-2
3.	Offense While on Release [§ 3C1.3]	0*
4.	Acceptance of Responsibility [§ 3E1.1]	-3
5.	Fast Track [§ 5K3.1]	-2
	Total Offense Level	**11**

*** Pursuant to this plea agreement, the United States will not seek a sentencing enhancement pursuant to 18 U.S.C. § 3147 and USSG § 3C1.3.**

B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A above, the Government will not recommend any adjustment for Acceptance of Responsibility if Defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or
2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or probation officer, or
3. Fails to appear in court, or
4. Engages in additional criminal conduct, or

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5. Attempts to withdraw the plea, or

6. Refuses to abide by any lawful court order.

C. **ADJUSTMENTS**

Defendant hereby reserves the right to request any additional downward adjustments. The Government will oppose any downward adjustment not set forth in Section X, paragraph A above.

D. **NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY**

There is **no** agreement as to Defendant's Criminal History Category.

E. **DEPARTURES**

The parties agree that defendant may request any downward departures, including any criminal history departures under USSG § 4A1.3. The parties further agree that the Government will oppose any downward departure not set forth in Section X, paragraph A above.

F. **"FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION**

The parties agree that the facts in the "factual basis" paragraph of this agreement are true, and may be considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

G. **PARTIES' RECOMMENDATIONS REGARDING CUSTODY**

The parties agree that the Government will recommend that Defendant should be sentenced to the **middle** of the advisory guideline range as calculated by the Government pursuant to this agreement, or to the applicable mandatory minimum sentence, whichever is greater. However, if the Court adopts an offense level or downward adjustment or departure below the Government's recommendations in this plea agreement, the Government will

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recommend a sentence as near as possible to what the sentence would have been if the Government's recommendations had been followed.

H. **SPECIAL ASSESSMENT**

The parties will jointly recommend that Defendant pay a special assessment in the amount of **$200** to be paid forthwith at time of sentencing. The special assessment shall be paid through the office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

In exchange for the Government's concessions in this plea agreement, Defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction. In addition, Defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the sentence, including any restitution order, unless the court imposes a custodial sentence greater than the high end of the guideline range (or statutory mandatory minimum term, if applicable) recommended by the Government pursuant to this plea agreement at the time of sentencing. If the custodial sentence is greater than the high end of that range, Defendant may appeal the sentence only, but the Government will be free to support on appeal the sentence actually imposed. If Defendant believes the Government's recommendation is not in accord with this plea agreement, Defendant will object at the time of sentencing; otherwise the objection will be deemed waived.

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XII

BREACH OF THE AGREEMENT AND CRIMES AFTER ARREST

This plea agreement is based on the understanding that, prior to Defendant's sentencing in this case, Defendant has not committed or been arrested for any offense not known to the Government prior to Defendant's sentencing. This plea agreement is further based on the understanding that Defendant has committed no criminal conduct since Defendant's arrest on the present charges, and that Defendant will commit no additional criminal conduct before sentencing. If Defendant has engaged in or engages in additional criminal conduct during this period, or breaches any of the terms of any agreement with the Government, the Government will not be bound by the recommendations in this plea agreement, and may recommend any lawful sentence. In addition, if Defendant has engaged in or engages in additional criminal conduct during this period, or breaches any of the terms of any agreement with the Government, the Government may, at its option, move to set aside the plea and/or to pursue any additional charges against Defendant (including charges dismissed without prejudice). The Government's pursuit of remedies for Defendant's breach or for Defendant's additional criminal conduct does not constitute a basis for Defendant to move to withdraw the guilty plea.

XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire plea agreement between the parties and supersedes any other plea agreement, written or oral.

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XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this plea agreement, Defendant certifies that Defendant has read it (or that it has been read to Defendant in Defendant's native language). Defendant has discussed the terms of this plea agreement with defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

KAREN P. HEWITT
United States Attorney

July 7, 2008
DATED

ANDREW G. SCHOPLER
Assistant U.S. Attorney

6·23·08
DATED

BENJAMIN P. LECHMAN
Attorney for Defendant

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

6·23·08
DATED

JOSE MALDONADO GUERRA JR.
Defendant